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IN THE

Supreme Court of the United States

October Term, 1962

No. 1036

[redacted] and Inez Dawkins,
Petitioners,

v.

[redacted] of California,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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[redacted]
Attorneys for the Respondent.

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TABLE OF AUTHORITIES CITED

Cases	Page
People v. Keller, 165 Cal. App. 2d 419	5

Statutes	
Business and Professions Code, Sec. 6071	5
Business and Profesions Code, Sec. 23300	7
Business and Professions Code, Sec. 23301	7
California Penal Code, Sec. 31	5
Revenue and Taxation Code, Sec. 6070	5
Revenue and Taxation Code, Sec. 6071	2, 5, 7
United States Code, Title 28, Sec. 1257(3)	4

IN THE

Supreme Court of the United States

October Term, 1962

No. .....

THEODORE ROOSEVELT NEALEY and INEZ DANKINS,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

Respondent respectfully represents that the judgments and memorandum opinion of the Appellate Department of the Superior Court of the County of Los Angeles, State of California, entered by said Court on January 18, 1963, in the above cases, numbered CR. A 5215 and CR. A 5216, were duly and properly made, and that the Petition for the Writ of Certiorari should be denied.

Statement of the Case.

Two separate complaints were filed against both defendants, charging them each with violation of Section 6071 of the Revenue and Taxation Code of the State of California, at two separate locations in the City of Pasadena. It was stipulated that the sale of merchandise occurred during the period of time charged in the complaints and the cases were by stipulation of counsel consolidated for the purpose of trial.

The Engrossed Statement of Appeal is hereby referred to and made a part hereof.

The evidence established that Theodore Roosevelt Nealey was the son and Inez Dankins was the mother of Nealey and he had a general power of attorney from his mother.

The evidence established that Nealey had been the owner of the premises and there were several vague and indefinite transfers of title to the premises and that presently he was acting as manager only and his mother was the owner and licensee.

The evidence showed that Nealey was the person in charge of handling both places. That for the nine months in 1961 when Sales Tax Returns were filed, Nealey signed the returns, sometimes signing his name as tax payer, sometimes indicating he was signing as manager and sometimes just signing his mother's name to the return.

The evidence showed that because of the defendants' failure to file three monthly returns: January, October and November, 1961, for the premises at 759 North Fair Oaks Avenue, Pasadena, California, the Board of

Equalization deposited in the mail on February 28, 1962, addressed to Inez Dankins, dba Due Drop Inn, 759 North Fair Oaks Avenue, Pasadena, California, postage prepaid, a notice of Revocation of the Sales Tax Permit. A photostatic copy of the notice together with an affidavit of mailing was introduced into evidence.

The evidence also established that prior to the issuance of the complaints, two members of the State Board of Equalization personally served a copy of the same notice of Revocation of the Seller's Permit on one of the employees of defendants during the course of business at 759 North Fair Oaks Avenue, and told him to give the notice to Mr. Nealey and Mrs. Dankins.

It was further established that prior to the issuance of the complaints herein, defendant, Nealey had been havng conversations over an extended period of time with John Hunt, the Tax Compliance Supervisor of the State Board of Equalization, pertaining to delinquencies and failure to file the three monthly returns. That Mr. Hunt had personally advised Nealey that the Seller's Permit for 759 North Fair Oaks was revoked and that each day he remained open, was a separate violation of law.

The evidence in regard to the second place of business, located at 751 North Fair Oaks Avenue, Pasadena, California, established that as of the period of time covered in the complaints, there were no records with the Board of Equalization of any Seller's Permit for said premises under any name. That the previous Seller's Permit issued for said premises had been closed out at a prior transfer.

Inez Dankins although present in Court, did not take the stand to testify.

The trial court found both defendants guilty and sentenced them as provided by law.

Jurisdiction.

Although petitioners filed for a rehearing with the Appellate Department of the Superior Court which was denied on the 29th day of January, 1963, they did not seek or file for a certification to the District Court of Appeal.

Petitioners filed a Petition for a Writ of Habeas Corpus or in the alternative a Writ of Coram Nobis with the Supreme Court of the State of California, bearing number CR 7355, which was denied on April 3, 1963.

Petitioners seek jurisdiction to this Honorable Court under United States Code, Title 28, Section 1257(3).

Petitioners claim denial of due process in that they were not properly advised of the charges and that administrative procedures prior to filing the criminal complaints were not followed.

A further point involves the validity of the rules of the Judicial Council of the State of California.

In response to the Questions Presented for Review, the respondents allege as follows:

(1) The evidence and record of the trial will show that defendant Nealey was present at discussions with the supervisor of the Board of Equalization, pertaining to the matters involved in these cases and he was personally notified of the revocation.

That the Notice of Revocation was sent under authority of Section 6070 of the Revenue and Taxation Code of the State of California.

That further, the Notice of Revocation was personally served on an employee during the course of business and said employee was advised to give said notice to the owner and manager.

(2) Nealey admittedly was the manager and operator of the businesses, and at least on one month's return signed as the taxpayer. Even though not the licensee, he was the person who did engage in selling the merchandise without having a valid permit to sell as required by the Board of Equalization under Business and Professions Code Section 6071.

Petitioners were charged in the complaints in the language of the appropriate statute. They were given a fair and orderly trial.

Section 6071 of the Revenue and Taxation Code does not say a "licensee" who engages in business as a seller; it says a "person" who engages in business as a seller.

Inasmuch as the evidence shows Nealey personally operating and managing these premises and that he personally knew that the seller's permit was revoked, his selling was in violation of the law for himself and also for the alleged owner, his mother. The business was being conducted unlawfully after the revocation of the permit.

Where defendant aids and abets another in the commission of a crime, both are equally guilty.

California Penal Code 31;

People v. Keller, 165 Cal. App. 2d 419.

(3) The contention by petitioners that the laws of appeal of the State of California as applied to petitioners are unconstitutional, does not appear to be valid.

The remedy of appeal is of constitutional or statutory origin, it was not known at common law.

Legislatively and judicially it is recognized that finality of judgment must exist at certain points in all litigation.

Even before the 1961 Amendment to which petitioners refer, if there was a constitutional question involved, an appeal could be taken from the Appellate Department of the Superior Court of the State of California direct to the United States Supreme Court.

Petitioners in this case made no request for certification to the District Court of Appeal as provided in the Amendments to the Appellate Department Rules adopted by the Judicial Council of the State of California.

The appellate hierarchy has been set up by the state legislature and it is of course subject to the constitutional safeguards prescribed by the United States Constitution, which assures a fair and proper trial under our system of government.

Petitioners in addition to the three questions raised, set forth the following seven points:

1. Possible bias on behalf of one of the witnesses of the Board of Equalization. However, Nealey testified that he was always treated fairly and impartially by the members of the Board of Equalization. [Engrossed Statement p. 5, lines 15 and 16.]

2. That no evidence of revocation of the permit at the location of 745 North Fair Oaks was introduced.

The evidence clearly showed that there was no current permit issued for these premises. (751 North Fair Oaks.)

3. That the Court made certain comments at the time of sentencing. Comments at the time of sentence do not indicate bias and prejudice as to the decision, and the Court can take judicial knowledge of records of the court.

4. The question of insufficiency of evidence as to revocation of the license in regards to 759 North Fair Oaks Avenue, Pasadena, California. The evidence was possibly conflicting, but adequate to convince the trial judge.

5. The question of bias and prejudice by reason of denying summarily the motion for new trial and the type of sentence should be considered. The motion for new trial was not summarily denied; it was properly denied after argument by both sides. The sentence imposed was within the provisions of the law.

6. That Business and Professions Code Sections 23300 and 23301 control and therefore Section 6071 of the Revenue and Taxation Code is not applicable to Nealey. The Business and Professions Code sections pertain to licensing under the Alcoholic Beverage Control Act. Defendant Nealey is charged with selling without having a Seller's Permit under the Revenue and Taxation Code, or after a permit had been revoked.

7. That no hearing was accorded to petitioners prior to the filing of the criminal complaints. This is contrary to the evidence.

Conclusion.

Wherefore, your respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

BYRON B. GENTRY,
City Prosecutor,
By DAVID PRESS,
Acting City Prosecutor
Attorneys for the Respondent.